

BOARD OF ENVIRONMENTAL REVIEW  
AGENDA ITEM  
EXECUTIVE SUMMARY FOR ACTION ON RULE INITIATION

Agenda # III. A. 3.

Agenda Item Summary: The Department requests that the Board initiate rulemaking to amend the air quality rules to conform the state definition of "major source" to the comparable federal definition.

List of Affected Rules: This rulemaking would amend ARM 17.8.1201(23).

Affected Parties Summary: The proposed amendment would affect sources in categories subject to standards under section 111 or 112 of the Federal Clean Air Act (FCAA) promulgated after August 7, 1980.

Scope of Proposed Proceeding: The Department requests that the Board initiate rulemaking and conduct a public hearing to consider the proposed amendment to ARM 17.8.1201(23).

Background: On November 27, 2001, the Environmental Protection Agency (EPA) promulgated a change to the definition of "major source" contained in 40 CFR 70.2, which EPA uses to determine major source status under the Title V air quality operating permit program. 66 Federal Register 59161. This action deleted the requirement that states include fugitive emissions in determining major source status for sources in categories subject to standards under Section 111 or 112 of the FCAA promulgated after August 7, 1980. Section 111 provides standards of performance for new stationary sources, and Section 112 provides for promulgation of emission standards for hazardous air pollutants.

EPA made this regulation change to address a petition by the National Mining Association challenging the previous requirement that fugitive emissions must be counted for all sources in Section 111 or 112 categories, regardless of when those standards were promulgated. The basis for the challenge was that Section 302(j) of the FCAA requires EPA to conduct rulemaking to determine sources of fugitive emissions that must be included in determining major source status for sources subject to Section 111 or 112 standards promulgated after August 7, 1980, and EPA has not done that. The EPA regulation required inclusion of fugitive emissions for all sources subject to a standard under Section 111 or 112, regardless of when the standard was promulgated. The EPA amendment added the August 7, 1980, date, so that fugitive emissions must be included in determining major source status only if the Section 111 or 112 standard applicable to the source was promulgated as of August 7, 1980.

The EPA amendments also deleted the phrase "but only with respect to those air pollutants that have been regulated for that category." This amendment was intended to

conform the definitions of 40 CFR Part 70 to the corresponding provisions of EPA's New Source Review (NSR) regulations. EPA is requiring states to delete this phrase from their rules to avoid inconsistencies under which a facility might be considered major under NSR regulations but not under Title V. If this occurred, in a Title V permit application, a facility could avoid reporting information concerning emissions for which it is major under Title V.

The proposed amendments to ARM 17.8.1201(23) would make the state definition of "major source" equivalent to the revised federal definition. The change in the definition of "major source" would not have a significant effect on the determination of major source status for new or existing sources in Montana.

Hearing Information: The Department recommends that the Board appoint a hearing officer and conduct a public hearing to take comment on the proposed amendment.

Board Options: The Board may:

1. Initiate rulemaking and issue the attached Notice of Public Hearing on Proposed Amendment;
2. Modify the Notice and initiate rulemaking; or
3. Determine that amendment of the rules is not appropriate and deny the Department's request to initiate rulemaking.

DEQ Recommendation: The Department recommends that the Board initiate rulemaking, appoint a hearing officer, and conduct a hearing, as described in the enclosed proposed MAR notice.

Enclosure:

Draft Notice of Public Hearing on Proposed Amendment.